Research and Statistics Division

JustResearch

Summer 2002 – Issue No. 7

www.canada.justice.gc.ca/en/ps/rs

Welcome

Welcome to the latest issue of JustResearch! Apart from providing you with interesting literature reviews, we also strive to highlight research from the Research and Statistics Division and relevant research from around government. One item to take note of in particular is the launching of the new Family Violence website. Be sure to check out the details inside!

We are also pleased to draw your attention to a new feature in our publication. Every issue will now include a section on new publications from the Research and Statistics Division. "JustReleased" will keep you informed about new research and statistical findings from our Division, and direct you to where you can order or download copies of the reports.

As always, we welcome your feedback and ideas. Happy Reading!

In this Issue

This issue is comprised of literature reviews on an array of topics including mandatory minimums, youth justice, intermediate sanctions, and mediation in child custody cases.

In addition, we are particularly happy to have been able to incorporate three in-depth profiles of recent research. Professor Mylène Jaccoud from the University of Montréal discusses the results of exploratory research on mediation between young offenders and victims. Paul Harms from the National Center of Juvenile Justice and Stephen Mihorean, from the Research and Statistics Division, profile their research on the murder of juveniles in the U.S. and Canada. And finally, Jeff Latimer and Jean-Paul Roy, also from the Division, examine the risk of imprisonment for accused charged with summary offences.

We would also like to take the opportunity to welcome JustResearch's newest team members, Trevor Sanders, Tiffany Murray and Allison Millar.

Contents

Upcoming Conferences 2
Connexions 2
Reviews 3
Child Custody Mediation and Litigation 3
Public Attitudes on Sentencing 4
Youth Justice Appeals 6
Intermediate Sanctions and Recidivism 7
Assessment of Reporting and Child Protection 8
Sentencing – Mandatory Minimum Penalties of Imprisonment 9
Influential Prejudice 11
Research in Profile 13
Mediation Between Young Offenders and Victims: Results of Exploratory Research in Quebec 13
Risk of Imprisonment and Summary Offences 15
Murder of Juveniles in the U.S. and Canada, 1999 17
Current & Upcoming Research
From the Research and Statistics Division 19
From Around Government 22

Department of Justice Canada
Ministère de la Justice Canada

Canada

2008-05641/

Contributors

JustResearch Team
Dan Antonowicz
Jasmine Brown
Nicola Epprecht
Allison Millar
Tiffany Murray
Nathalie Quann
Trevor Sanders
Karin Stein

Editor
Jeff Latimer

Advisory Panel
Stan Lipinski
Roberta Russell

Publications Officer
Charlotte Mercier

Feedback

We invite your comments and suggestions for future issues of JustResearch. We welcome your ideas for articles, themes, topics or issues to examine from the literature and are happy to include information on any relevant and interesting research work undertaken in other Departments.

We may be contacted at rsd.drs@justice.gc.ca

Upcoming Conferences

Advancing Restorative Justice: Enhancing Practices and Expanding Horizons – A National Conference
September 26-28, 2002, Gatineau, QC, Canada
Theme: The Canadian Criminal Justice Association, the International Centre for Criminal Law Reform and Criminal Justice Policy and the Simon Fraser University Centre for Restorative Justice are co-hosting this conference, which is a follow-up to a symposium on Restorative Justice in March 1997.
http://home.istar.ca/~ccja

Call for Papers: European Society of Criminology's Second Annual Conference
September 5-7, 2002, Toledo, Spain
Theme: European Criminology: Sharing Borders, Sharing a Discipline
http://www.esc-eurocrim.org/

Call for Papers: American Society of Criminology's Annual Meeting 2002
November 13-16, 2002, Chicago, Illinois, USA
Theme: Re-Inventing Justice: Theories, Innovations and Research
http://www.asc41.com

Connexions

Financial Action Task Force on Money Laundering (FATF)
In existence since 1989, this inter-governmental "policy-making body" works to generate the necessary political will to bring about national legislative and regulatory reforms to combat money laundering. The web site offers information, recommendations, and other initiatives to reduce the vulnerability of the international financial system.
http://www1.oecd.org/fatf/

Legal Aid Around the World
Pine Tree Legal Assistance maintains this website, providing a comprehensive list of links to web sites providing information about legal aid and legal services internationally.
http://www.ptla.org/international.htm

Best Guide to Canadian Legal Electronic Research
An excellent resource that provides effective strategies and techniques for Canadian legal research, electronic research tools, and links to information about researching the law of the United States, United Kingdom, Australia, European Union and International Law. This website was developed with the support of University of British Columbia Faculty of Law, Campney and Murphy Barristers and Solicitors and the Foundation for Legal Research.
http://www.legalresearch.org/

Victims of Violence, Canadian Centre for Missing Children
Dedicated to the prevention of crimes against children and helping victims of violent crime, this site features a variety of child safety and educational materials.
http://www.victimsofviolence.on.ca/index.html

Reviews

CHILD CUSTODY MEDIATION AND LITIGATION

Emery, R. E., Laumann-Billings, L., Waldron, M.C., Sbarra, D.A. & Dillon, P. (2001). **Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution.** *Journal of Consulting and Clinical Psychology, 69*(2), 323-332.

Reviewer:
Christine Wright, Principal Researcher

In the last five years, the Canadian federal government in concert with provincial and territorial officials who share jurisdiction in the area of family law, has been active in examining and developing policy in areas affected by family breakdown, with an emphasis on "the best interests of the child".

On May 1, 1997, the amendments to the *Divorce Act*, which changed the tax treatment of child support payments, and the *Federal Child Support Guidelines* came into effect. Also in that year, Parliament struck the Special Joint Committee on Child Custody and Access to examine custody and access issues and to assess the need for a more child-centered approach to family law policies and practices. After holding public hearings, the Committee released its report *For the Sake of the Children* in December 1998. The Minister of Justice tabled the *Government of Canada's Response* to this report on May 10, 1999, outlining a strategy for reform. In Spring 2002, the Department of Justice Canada tabled its report to Parliament on the operations of the *Federal Child Support Guidelines*.

Throughout this period, a major focus of these initiatives has been on examining alternative models of dispute resolution and on making divorce/separation less harmful to children. Some of these include "Parenting after Separation" courses for parents going through the process, mediation versus litigation to resolve custody, as well as other matters.

Because litigation is seen as expensive, time consuming and divisive, the availability of mediation services has enjoyed a considerable proliferation in the hopes of improving the well-being of separated families, and especially children. Various programs across Canada have been implemented and evaluated.

This paper presents the results of an American study, which examined custody, parental contact and co-parenting 12 years after initial dispute resolution. Families petitioning a Virginia court for a custody hearing were assigned at random either to attempt mediation or to continue with adversary procedures. The mediation program in question was specifically designed for the purpose of the research. Families were assessed at three intervals: at approximately one month following their dispute resolution, after 18 months and then after 12 years.

This article focuses on differences between groups in terms of living arrangements, non-residential parent-child contact and involvement, and parents' satisfaction 12 years after dispute resolution. Specifically, the research compares groups in terms of:

a. children's primary residence;
b. changes in children's residence over time;
c. children's contact with non-residential parents;
d. non-residential parental involvement and conflict in co-parenting;
e. women's and men's acceptance of marital termination and depression; and,
f. women's and men's satisfaction with dispute resolution.

The initial study was comprised of 71 families who had petitioned for child custody hearings from a Juvenile and Domestic Relations District Court in central Virginia between 1983 and 1986. Of these, 35 families mediated and 36 families litigated their custody disputes. For the 12-year follow-up component, the researchers were able to re-contact and include 27 of the mothers and 25 of the fathers who had mediated, as well as 25 of the mothers and 23 of the fathers who had litigated.

At the 12-year follow-up, the samples were compared based on many demographic characteristics, such as parent age, race, socio-economic status, education, subsequent relationships, numbers of biological children, and the age and sex of the target child. There were no significant differences found between the mediation and litigation groups on these variables.

Mediation took place inside a courthouse, was conducted by one of four pairs of male and female co-mediators and was limited to no more than six, two-hour sessions. Only 4 out of 35 mediation cases were eventually contested, whereas 26 out of 36 adversarial cases proceeded to litigation.

Only noteworthy findings are reported here:

a. Children's primary residence: Data indicated that there were no significant differences between the mediation and litigation groups in terms of children's primary residence initially and after 12 years.
b. Changes in residence over time: According to children's reports, significantly more families who mediated than who litigated made at least one change in children's living arrangements during the 12 years.
c. Non-residential parent contact: Results indicate that non-residential parents in the mediation group saw the children significantly more often than those in the litigation group and spoke more often on the telephone.
d. Co-parenting involvement and conflict: According to reports made by the residential parents, non-residential parents who mediated were more involved with their children than non-residential parents who litigated. Many measures of co-parenting conflict were scored but none were significant between groups or over time.
e. Acceptance of marital termination and depression: Very few of these measures showed any statistical significance. However, fathers in both groups became more accepting of the marital separation and depressive symptoms declined significantly over time.
f. Satisfaction with dispute resolution: In all cases, fathers who mediated were significantly more satisfied on all measures than fathers who litigated. In contrast, only one of five measures indicating satisfaction with the process was statistically significant for women – that is, women who litigated were more likely to report that the court intervention helped to settle problems with their former spouse.

The authors readily acknowledge the limitations of their study. It is admittedly one study of one relatively small sample in one court at one point in time. It is not representative or generalizable to other mediation programs, courts or populations. It is, however, one of the few to follow-up with families after such a long period of time following dispute resolution. Moreover, the random assignment to alternative methods of dispute resolution and the causal implications remain a strength. If one reads the actual report it becomes evident that the authors of the study took great efforts to study many factors, which may have influenced results such as selective attrition, demographic differences among groups and time effects.

Given the very real policy concern with the gradual decline of the non-residential parent's interaction with the children of divorce and separation, this study does offer some support for the potentially positive effects of mediated settlements versus litigated ones. These effects also appear to have integrity over time.

PUBLIC ATTITUDES ON SENTENCING

Doob, A.N. (2000, July). **Transforming the punishment environment: Understanding public views of what should be accomplished at sentencing**. *Canadian Journal of Criminology*, 323-340.

Reviewer:
Trevor Sanders, Research Analyst

Public opinion polls have frequently been used to measure attitudes toward the justice system. Sentencing in particular, is an area that has been the subject of numerous surveys of public opinion. In this article, Doob critiques the simplicity of polls that merely ask the public about the severity of sentencing and go no further. Doob contends that when asked intelligent questions about sentencing, Canadians provide intelligent answers.

The common question on sentencing severity, he argues, is of little use when no more follow-up questions are asked. Various surveys over the years have reached the conclusion that the public feels that sentences are not severe enough. Doob makes the point that this conclusion is drawn because it is the only question asked about sentencing. The public uses the question of severity to express their frustration with sentencing in general, not necessarily its severity. Highlighted in the paper is a poll of Ontario residents with detailed questions on sentencing.

The poll consisted of a representative sample of adult residents of Ontario. Half the sample was questioned regarding adult offenders, while the remainder was questioned about young offenders.

When questioned about the various purposes of sentencing, multiple priorities resulted. More than three-quarters of the sample viewed four of the five choices provided as important. The purposes listed in the questionnaire were: 1) expressing the community's disapproval of the crime; 2) deterring the offender and other persons from committing offences; 3) separating offenders from society; 4) assisting in rehabilitating of offenders; and, 5) compensating victims or the community. This finding gives the criminal justice system no clear public mandate to focus on only one objective.

Doob declares that no legislative mandate exists either, leaving judges without direction on the priorities of sentencing. In this poll, the largest portion of respondents viewed deterrence followed by rehabilitation as the top priorities in sentencing for both adult and young offenders. Respondents questioned about young offenders rated the importance of these two purposes higher. Incapacitation was seen as the least important purpose, particularly in response to crimes by youth.

A question on the most effective way to control crime drew "harsher sentences" as the most common response to crimes by both adults and youths. However, "harsher sentences" was chosen by less than one third of respondents in the context of adult offenders and one-quarter in terms of youth. For adults, reducing unemployment was seen as the next most effective method of controlling crime, while for youths, increased social programs was seen as the second priority. For both groups, the use of alternatives to incarceration was selected by the third largest percentage of respondents.

Further probing the idea that the public wants harsher sentences, respondents were presented with choices between spending on prison and spending on alternatives. Presented with a choice between building more prisons and the use of alternatives to incarceration, a strong majority of respondents favoured alternatives (66% for adults and 79% for young offenders). Offered a similar choice between investing in more prisons and investing in crime prevention, nearly nine in ten respondents chose prevention.

The study also sought to explore whether making salient the fact that imprisoned offenders will eventually be released back into the community would impact public attitudes. Reminding people that those sentenced to imprisonment would be returning to the community made imprisonment less popular and the alternative of probation combined with community service preferential. Similarly, when given a choice between prison and community service or a fine, support for prison was lower when respondents were reminded of the costs of imprisonment. These responses indicate that public support for prisons is malleable. Public sentiments on alternatives to prison were further probed in the study. Respondents were asked whether they thought community service orders are carried out to successful completion. Significant portions of the public believe that community service orders are carried out in half or less cases. This finding indicates a need for further research and public education.

The results presented in this study indicate that, though the public often expresses frustration with the severity of sentences, they are in fact very open to community based alternatives to incarceration. For example, family group conferences were seen as appropriate by two-thirds to three-quarters of respondents for dealing with a case of theft. In addition, the more informed members of the public are about the costs and realities of imprisonment and its alternatives, the less attractive imprisonment becomes. A similar conclusion was reached in a study on conditional sentencing (Sanders & Roberts 2000). When the actual nature and number of conditions was made known, support for conditional sentences rose significantly. The key to this support appears to be in informing the public about the facts of a sentence and its alternatives.

The Department of Justice is currently conducting a study of public attitudes toward conditional sentencing. The questions included in the poll are designed to go beyond perceptions of sentencing severity. One objective of the poll is to probe the public's perception of jail terms and conditional sentences in terms of meeting various sentencing goals. Also explored will be the effect of judicial decisions on opinions toward conditional sentences.

References

Roberts, J. V. & Stalans, L. (1997). *Public opinion, crime and criminal justice*. Boulder, Colorado: Westview Press.

Sanders, T. & Roberts, J.V. (2000). Public attitudes toward conditional sentencing: Results of a national survey. *Canadian Journal of Behavioural Science, 32*, 4.

YOUTH JUSTICE APPEALS

Ruddell, R. (2001). **Appellate juvenile justice: Canadian style**. *Juvenile and Family Court Journal*, 13-24.

Reviewer:
Laura Dickey, Research Assistant

In an attempt to determine the importance of appeals to the sentence of Canadian youth convicted of a criminal offence, Ruddell examines the outcomes of ten years of appeals in one province. He discovers that, while appeals are relatively rare in Canada, they have significant outcomes for both youth and prosecution in either reducing or increasing the severity of a disposition. Ruddell argues that despite the importance of these appeals in redressing errors and modifying punishments, it is becoming increasingly difficult for youth to initiate appeals.

On February 19, 2002, the *Youth Criminal Justice Act* (YCJA) received royal assent and will come into force in April 2003 replacing the *Young Offenders Act* (YOA). Although appellate rights are inherent in the YCJA, Ruddell questions whether young offenders have realistic access to this protection. The YCJA was developed with the objective of making youth more accountable for their criminal behaviour by protecting society and assuring more severe consequences for serious juvenile offenders. He argues, however, that national reductions in legal aid expenditures may have impaired the ability of youth to mount effective defences in court. While Section 25 of the YCJA does guarantee the right to counsel for youth, Ruddell points out that it does not cover appeals.

The primary purpose of this study was to: 1) illustrate how appeals can significantly impact youth by giving them the opportunity to correct errors in judgement and review unusually harsh punishments; and, 2) demonstrate how the Court of Appeal is concerned with "maintaining the legitimacy of the administration of justice as well as the principle of general deterrence."

In this study, data was collected from young offender appeals heard in Canada from 1994 to 1999 and compared with youth court statistics. In addition, all young offender appeals heard before the Court of Appeal of Saskatchewan from 1990 and 1999 were examined. All data used in this study were obtained from the provincial and territorial courts of appeal and the Canadian Centre for Justice Statistics.

Ruddell found that 71,961 youth were found guilty of criminal offences in Canada in 1999 and of those youth, 25,169 were placed in custody. However, in the same year, only 200 appeals were heard nationally. Although the number of youth being placed in custody remained relatively stable over time, the overall number of youth appearing before the Appellate Courts decreased by 43% from 1994 to 1999. Ruddell attributes this reduction in the number of appeals heard in this period to national reductions in legal aid funding. Between 1992 and 1997, provincial and territorial legal aid expenditures decreased by 27.6%.

From 1990 to 1999, the Saskatchewan Court of Appeal heard a total of 253 young offender matters. Of these, 218 were youth-initiated, 32 were prosecution-initiated, and in three cases, both parties appealed. Of the 218 young offenders who appealed a disposition, 60 were successful in reducing the severity of their dispositions. However, only 38 of these actually reduced the number of days of incarceration. Of the 32 cases initiated by the prosecution, 26 resulted in a more punitive disposition, with an average increase of 223.4 days in custody.

These findings indicate that youth initiate most appeals in Canada, but few are actually effective in reducing the severity of the disposition. Furthermore, while prosecution-initiated appeals are comparatively rare, they almost always result in substantial increases in the severity of a youth's disposition. Consequently, Ruddell argues that the lack of state-funded counsel for appeals diminishes a youth's ability to redress errors or modify unusually harsh dispositions. Ruddell does not point out, however, that Legal Aid Plans will cover appeals initiated by youth if they are based on solid grounds and/or have a reasonable chance for success. Moreover, it is standard policy across the country to cover prosecution-initiated appeals if the youth received legal aid during the original charge. The reform that Ruddell suggests would likely result in a substantial increase in youth-initiated appeals. This would add considerable costs to both Legal Aid and the criminal justice system, in general. The extent to which state-funded appeals would improve the quality of youth justice in Canada needs to be carefully considered. Of equal interest is the fact that youth- and prosecution-initiated appeals have such drastically different outcomes. This phenomenon should be further explored through supplemental research.

INTERMEDIATE SANCTIONS AND RECIDIVISM

Ulmer, J.T. (2001). **Intermediate sanctions: A comparative analysis of the probability and severity of recidivism.** *Sociological Inquiry, 71*, 164-193.

Reviewer:
Kwing Hung, Senior Statistician

Objective of this Study

For a long time, criminologists have studied the effects of community corrections, as opposed to incarceration, on reducing recidivism. The majority of social scientists have come out in support of a greater use of community corrections. With the support of some empirical evidence, they argue that re-integrative criminal sanctions such as community corrections can prevent re-offending by "restoring or preserving conventional social bonds, opportunities, and socialization processes" while stigmatizing criminal sanctions such as incarceration can "foster entrenched interaction with criminal peers and increased commitment to criminal attitudes, values, and activities." This study attempts to compare the probability and severity of recidivism between offenders sentenced to intermediate sanctions (such as house arrest, work release) and those sentenced to traditional sanctions (such as incarceration, traditional probation).

Methodology

The sample for this study was a group of 528 adult felony ("indictable" in Canada) offenders in an unidentified county in the state of Indiana. The final sample was actually 516 offenders as 12 were omitted because of missing values. They were selected through stratified random sampling of all offenders released between 1991 and August 1995, with over sampling for females and blacks. They were then followed until August 1997 for a follow-up period, or time at risk, of at least two years.

There were three indicators for recidivism: incident of re-arrest, re-arrest severity (type of offence), and incident of probation revocation. Background information collected for this study included: age, sex, race/ethnicity, marital status, education, previous offence, previous offence severity (based on frequency and seriousness of offence), drug/alcohol treatment order, prior criminal record, and criminal sanctions received.

The data were then subjected to a multiple regression analysis. Correlation coefficients among the variables were also tabulated but not discussed. Regression models were calculated from logistic regression, for dichotomous dependent variables, and ordinary least squares (OLS) regression.

Results

In terms of odds of re-arrest, the results of regression analysis show that significant predictors include a long prior criminal record, being male, with low education, with a drug/alcohol treatment order, and previously being a property or traffic offender. In relation to the type of sanctions, higher odds of re-arrest are associated with those sentenced to traditional probation while lower odds are associated with those sentenced to house arrest. However, it should be noted that a combination of house arrest followed by traditional probation has the lowest odds of re-arrest. Further, the odds of re-arrest are actually higher for work release than for incarceration. This fact is not mentioned in the author's discussion.

In terms of the severity of the offence on arrest, the results of the regression closely resemble those for re-arrest odds. Again, significant predictors include prior criminal record, sex, education, property or traffic offenders. In relation to the type of sanctions, lower severity of arrest offences is again associated with house arrest. However, the re-arrest severity for work release is higher than traditional probation and higher than incarceration, another important point that is not discussed in the article.

In terms of odds of probation revocation, the results of the regression show that significant predictors include age, gender, previous offence severity, property offender, and drug/alcohol treatment order. In relation to the type of sanctions, only house arrest shows a significant association but this time the association is in the opposite direction, that is, offenders sentenced to house arrest had higher odds of probation revocation. The author attributes this phenomenon to the greater level of surveillance of offenders in house arrest and the probation was revoked not because they committed any new offences but rather violated some probation conditions.

In general, the author believes that the findings of this study are generally consistent with previous research: 1) prior criminal record, sex, education, offence type are significant predictors of recidivism; and, 2) "intermediate sanctions of any type may potentially reduce recidivism."

Critique

The study is a carefully done piece of research but the actual findings do not support its over-reaching conclusion with reference to intermediate sanctions.

First, the results of the regression analysis are at best mixed, similar to previous studies cited in the article. While re-arrest odds and re-arrest severity are lower for those sentenced to house arrest, they are only slightly higher for incarceration and are actually even higher than incarceration for work release, another type of intermediate sanction. The author also discounts the results of probation revocation, which shows the highest revocation odds for offenders under house arrest as a type of "net-strengthening," not recidivism. The results therefore do not provide a clear answer to the main objective, as stated in the title, which is a comparison of intermediate sanctions to traditional sanctions.

Second, the data are not pure. Only one-fifth of the offenders were sentenced to a single type of sanction while the majority was sentenced to a combination of different sanctions. Thus the same offender who got both probation and house arrest would be used in providing weights for both the regression coefficients for probation as well as for house arrest. Furthermore, 500 or 95% of the offenders in the sample received probation and the recidivism odds in relation to a probation sanction would therefore depend heavily on the characteristics of the remaining 5% (28 offenders). In addition, qualitative data collected in this study revealed that offenders received different sanctions according to their prior record and type of offence. It is true that offenders with the lowest risk received probation and this study showed that their re-arrest odds were unexpectedly higher compared to other offenders. On the other hand, offenders receiving incarceration and work release should be the highest risk and this study showed that indeed they were. In other words, the results of this study do not demonstrate the pure effect of the type of sanctions on recidivism; rather they demonstrate simultaneously some effect of selection bias by criminal justice workers.

Third, the size of the sample is not large. Some of the frequencies are rather low even before analysis. In addition, missing values for marital status and education were assigned arbitrarily. These are still acceptable procedures but these problems render the results less definitive and less conclusive.

Despite these weaknesses, the article contains a good review of previous work done in this area. The methods used in this study should be adapted to future, larger scale studies of a similar kind.

ASSESSMENT OF REPORTING AND CHILD PROTECTION

Jacob, M., & Laberge, D. (2001). **L'évaluation des signalements à la Direction de la protection de la jeunesse : étude des facteurs qui influencent les décisions prises par les intervenants**, (Assessment of reporting at the Youth Protection Branch: A study of the factors that influence the decisions of intervening parties). *Criminologie, 34*(1).

Reviewer:
Catherine St-Onge, Research Assistant

Children are generally perceived as being vulnerable and warranting the protection of those around them. This is why certain agencies in our system, like the Youth Protection Branch in Quebec, are responsible for handling complaints received on behalf of young people concerning their safety and well-being. Depending on the origin of the complaint, who reported it and their reasons for doing so, the process for deciding whether the young person is in a dangerous situation and the process for deciding to investigate the report may differ, as this article demonstrates.

The first purpose of this study was to determine the path of the cases of children reported to Youth Protection. The second objective was to identify the determining factors in the decision-making process in two specific situations that occur in child protective services: the decision to investigate the report and making a decision concerning whether a child's safety and development is in danger. The final objective was to compare the two decisions.

To that end, the authors examined two stages in the intervention process used by youth protection caseworkers. The first stage, receipt of complaints, includes two options for the caseworkers: the decision not to investigate the complaint and refer the case to another available resource or the decision to conduct an in-depth investigation of the case by organizing a meeting with the child's immediate circle. This leads to the second stage: evaluation of the reports. At the end of this stage, there are three possible outcomes with respect to decision-making: 1) the complaint is substantiated and the child needs protection; 2) the complaint is substantiated but the child is not considered to be in need of protection; and, 3) the complaint is not substantiated.

The study was conducted at the Child and Youth Protection Centre of Quebec City, which has a mostly urban and homogeneous population base. The researchers used a sample of 720 reports received by the Youth Centre between December 5, 1994, and February 5, 1995. Their data was gathered from the information contained in the files and assessment reports of the children in question.

The variables identified as being the most likely to influence the decision to investigate the report are the source of the report (youth, mother, police officer, school environment, Le centre local de services communautaires (CLSC)/doctor), the nature of the allegation (neglect, physical abuse, sexual abuse, behavioural problems, school absenteeism), the alleged perpetrator (youth, parents, family, more than one person, third party) and the administrative unit that received the report (emergency social services, reception).

The factors examined as the best predictors of the outcome of the decisions are the nature of the allegation, the source of the report, the alleged perpetrator and the case status in the youth centres (active, classified, new). More specifically, reports made by parents, police officers and doctors are more likely to be investigated and the probability of the report being unsubstantiated is higher in the case of sexual abuse, physical abuse or cases where the young person does not have an existing file at the Youth Centre.

The paths of the reports highlighted in this study demonstrate that a significant number of children's files are closed by the caseworkers and that in only a very few cases does their situation become dangerous. As the caseworkers make a distinction between a child in need of protection and a child who only needs help, situations where a young person is not taken into care are frequent and those where the young person is referred to other community resources are much more frequent. The alleged perpetrator may also change the path of the case. For example, when the alleged perpetrator is a member of the family, the chances are high that a more in-depth investigation would be requested since the child's immediate circle is deemed inadequate. This is different from the case where the alleged perpetrator is not a family member since the young person still has his or her close family to take care of him or her. For the most part, these cases are referred to other resources.

By comparing two possible decisions, the authors noted certain differences in the various stages of the process. Interveners from youth centres and foster homes have more of a tendency, due to their experience, to justify their requests for in-depth investigations of cases. Doctors, interveners in the CLSC and the school environment are more likely to have their reports investigated because they normally report more serious situations and have supporting evidence. Police officers are more likely to expose the majority of situations and the most diverse situations and their reports are less often investigated than those of other professionals. With respect to non-professionals, their complaints are rarely investigated because their credibility is often in question and they frequently have no evidence. Finally, the nature of the problems that are revealed also greatly influence the importance that will be given to them during decision-making. Although they are more difficult to prove, sexual abuse reports are taken more seriously. However, cases where there is no reason to believe that there is abuse or neglect are more often considered to be family problems and are not often dealt with through the formal process.

This article raises some questions about the method and the samples used. The study was conducted using a very homogeneous sample (language, culture, environment), thus, it would be interesting to know if these results would be the same with a more diversified sample. Variables such as socio-economic status or geographical environment could well influence the number of reports. Since the study was conducted in only one youth centre, are the conclusions general enough to be applied to all youth centres? It is important to maintain perspective on these so as not to interpret them as research findings that may explain all the paths and all the factors that influence the decision-making concerning possible danger and the investigation of reports. They may act as indicators but not as predetermined responses.

SENTENCING – MANDATORY MINIMUM PENALTIES OF IMPRISONMENT

Crutcher, N. (2001). **Mandatory minimum penalties of imprisonment: A historical analysis.** *Criminal Law Quarterly, 44;* 279-308.

Reviewer:
Dan Antonowicz, Research Analyst

Mandatory minimum penalties of imprisonment have been a controversial topic in Canada for a number of years. They are sentences established by Parliament to ensure that each individual convicted of a specific criminal offence, despite the circumstances surrounding the offence and the offender, receives at

least a minimum term of imprisonment. In this article, Crutcher traced the use of mandatory minimum penalties of imprisonment and the House of Commons debates that accompanied them from the enactment of the first *Criminal Code of Canada* in 1892 to the year 1999 (and to a lesser extent the *Opium and Narcotic Drug Act* and the *Narcotic Control Act*). She examined four different time periods in her historical analysis of mandatory minimum penalties in Canada: 1) the first era of the *Criminal Code of Canada*: 1892-1927; 2) a period of evaluation and reform: 1928-1954; 3) the post-revision period: 1955-1981; and, 4) a new consideration – the *Charter* era: 1982-present.

There were a total of six offences that carried mandatory minimum penalties of imprisonment when the first *Criminal Code of Canada* came into effect in July 1893. Most of these offences were designed to ensure the legitimacy of public institutions in preventing abuses (e.g., included engaging in prize fighting, frauds upon the government, corruption in municipal affairs, stealing post-letter bags). In order to help prevent unfair or unjust sentences from being imposed, there were a number of options available to judges in the *Criminal Code* in this time period that allowed for the sentencing judge to use discretion even when a mandatory minimum penalty was in place. The options included suspended sentences, fines in lieu of punishment, a royal pardon, the royal prerogative (the pardon and prerogative were essentially the same) and through the *Ticket of Leave Act*. This *Act* allowed an offender to remain in the community regardless of the offence or sentence length. By the end of this period, seven additional mandatory minimum penalties of imprisonment had been legislated (included 3rd or subsequent convictions for being a keeper or inmate of a common bawdy house, selling insurance without a license, etc.). The three main arguments in the House of Commons debates that directly addressed this issue focused on: 1) protection of the public; 2) deterrence; and, 3) protection of females.

The years 1928 to 1954, also referred to as the period of evaluation and reform in the article, witnessed an increase in activity regarding mandatory minimum penalties of imprisonment in terms of legislation as well as debates. The *Criminal Code* and the *Opium and Narcotic Drug Act* were amended nine times during this period to include additional mandatory minimum penalties (included prescribing or selling a drug without medical justification, using a firearm during the commission of an offence, etc.). However, a total of 14 minimum sentences were repealed in this same time period (included engaging in the business of insurance without a license) leaving a total of eight offences that carried a minimum term. During this time period, two judge-based penalty options were removed: suspended sentences and fines in lieu of punishment. The arguments used in the increasing number of debates to support these penalties included: 1) reduced sentencing disparity; 2) prevented lenient penalties from being imposed; and, 3) acted as a deterrent. In opposition, arguments included: 1) limited judicial discretion; 2) made it difficult to get juries to convict; and, 3) cast too far a net by grouping a wide range of possible situations under one umbrella.

In the post-revision period (1955-1981), there were continuing debates on minimum penalties. The House of Commons witnessed increased efforts to institute new mandatory minimum penalties of imprisonment in the 1970s. A number of these Bills, however, died on the order paper during this time period. Nine amendments were legislated that added minimum penalties but six minimum penalty provisions were repealed during this time frame. The additions included the creation of minimums for life in prison for murder and high treason; the repeals included driving while intoxicated and theft from the mail. Between the years 1969 and 1976, the number of minimums was at an all time low of two but by 1981 this number had increased to 10. With respect to judge-based options, the *Ticket of Leave Act* was removed and the National Parole Board was created during this time frame. The Board would only consider sentences that were two years or longer. The same arguments continued to be put forward to support or counter minimum penalties as in the previous time period.

After the inception of the *Canadian Charter of Rights and Freedoms* in 1982 (the *Charter* Era: 1982 to 1999), the addition of new mandatory minimum penalties of imprisonment was not as frequent. In 1995, however, the government introduced and passed a Bill that added 19 new minimum penalties. The majority of these punishments were the result of Bill C-68 (the 1995 *Firearms Act*). By 1999, there were a total of 29 criminal offences in the *Criminal Code* that had a mandatory minimum. During the *Charter* era, there were no arguments debated in the House that supported minimum penalties. In contrast, arguments against them were more abundant; they included limited judicial discretion, costs to corrections, concerns that they may create "ceilings" (i.e., minimum penalty becomes the only penalty judges impose), and concerns about possible *Charter* challenges.

Based on the results of her historical analysis from 1892 until 1999, Crutcher reported that the nature of the offences that carry a minimum penalty has changed over the years. In the original *Criminal Code*, almost all of the offences that carried a minimum penalty were concerned

with offences against Canadians and their institutions as opposed to being offences against the person. In contrast, almost all the minimum penalties that are now found in the *Code* pertain to offences against the person. She reported that the arguments that have been used to support or oppose minimum penalties have essentially remained unchanged over the years. It appears that little has been resolved through parliamentary debates. Crutcher also expressed her concern that, while there has been a dramatic increase in the number of mandatory minimum penalties, the options that were available to sentencing judges during the first 60 years of the *Criminal Code* are no longer in place.

In response to proposals in recent years to increase the use of mandatory minimum penalties, the Federal/Provincial/Territorial Working Group on Sentencing (co-chaired by the Department of Justice Canada – Sentencing Reform Team) commissioned a review of the empirical literature on the use and effectiveness of these penalties that was completed in 2001 (Gabor & Crutcher). Research from Canada, the United States, Australia, New Zealand, Malaysia, and the United Kingdom was examined. Given that there is a significant dearth of empirical research on mandatory sentencing in the Canadian context, the review had to rely to a great extent on American research. The report concluded that the benefits in crime prevention would be modest relative to the elevated prison costs. There was no evidence that either discretion or disparities in levels of sentence were reduced. In fact, these penalties were found to exacerbate existing racial disparities in sentencing. A number of adverse effects such as the increase in costs to the courts and prison systems were also found.

References

Gabor, T. & Crutcher, N. (2001). *Mandatory minimum penalties: Their effects on crime, sentencing disparities, and justice system expenditures.* Ottawa, ON: Department of Justice Canada, Research and Statistics Division.

INFLUENTIAL PREJUDICE

Levine, M., Williams, A., Sixt, A. & Valenti, R. (2001). **Is it inherently prejudicial to try a juvenile as an adult?** *Behavioral Sciences and the Law, 19,* 23-31.

Reviewer:
Tiffany Murray, Research Assistant

Defining an impartial juror as "one who has not formed an opinion about the defendant's guilt or innocence, but will grant the defendant the presumption of innocence", this study analyses the role that influence and assumption plays in convicting young offenders. Given the unusual situation of seeing a youth in adult court, the possibility of prejudice needs to be considered.

Told only that a youth who could have been tried as either an adult or a juvenile was being tried as an adult for murder, 218 undergraduate mock jurors (participating for course credit in an introductory psychology course) formed consistent impressions of the defendant. The mock jurors were given a list of 14 characteristics and an opportunity to use a Likert scale to answer how knowledge of these characteristics might influence their decision of guilt or innocence.

The study found that a high percentage of mock jurors were likely to infer a criminal history for a youth being tried as an adult, and to be influenced toward voting guilty based on this history. When asked if the defendant was likely to possess tendencies toward a criminal history: 83% of the mock jurors believed the defendant had committed crimes in the past; 71% thought the defendant had a criminal record; 26% of the mock jurors believed the defendant to have acted just this once; and 68% assumed that the defendant had previous contact with the police.

When probed further, the mock jurors admitted that this information influenced their decision of guilt or innocence despite the available choice of addressing this information as irrelevant to their decision. High percentages of the jurors agreed that knowledge of past crimes (94%), the crime as an isolated incident (70%), a previous record (95%), and an excess of police contact (91%) would influence their decision.

The study concludes that "juveniles tried as adults are exposed to jurors who (1) are likely to infer a previous criminal history, and (2) are likely to be prejudiced by that inference toward voting guilty." However, limitations are clearly evident, even to the authors of the report, who describe their work as "an initial study, and a slender reed on which to rest a sweeping conclusion of an implicit violation of a constitutional right, especially given the limited ecological validity of the method." They note that society's fear of crime may create an intrinsic bias against all criminal defendants so that within a study composed strictly of adult offenders, the same conclusions may be found. Furthermore, they find it reasonable that the mock jurors would infer the characteristics based on their general knowledge of

crime statistics, but take issue when the knowledge of these characteristics influences initial attitudes toward guilt.

In Canada, with the recent passing of the new *Youth Criminal Justice Act*, the process for transferring young offenders to adult court has been modified and avoids the potential biases described in this study. The *Act* allows serious young offenders to be tried in youth court, and once guilt or innocence has been determined, an adult sentence can then be imposed thereby circumventing any potential for such a prejudice to be formed in advance.

JustReleased

The Research and Statistics Division has released many new publications over the last few months. Here is a list of reports that may be of interest to you, all of which are available on our Internet site at: http://canada.justice.gc.ca/en/ps/rs/

The Effectiveness of Restorative Justice Practices: A Meta-Analysis, by Jeff Latimer, Craig Dowden and Danielle Muise. This report is the first in a series of publications from the Research and Statistics Division that will profile innovative policy research methods.

Borders Conference – Rethinking the Line: The Canada-US Border, Child Pornography on the Internet Session, by Steven Kleinknecht. This report provides a summary of a conference panel session that discussed the issues arising from child pornography on the Internet.

Section 745.6 – The "Faint Hope Clause", by Karin Stein and Dan Antonowicz. This fact sheet provides information on section 745.6 of the *Criminal Code of Canada*, which enables offenders serving life imprisonment with parole ineligibility periods of more than 15 years to apply for a reduction of that period.

Questions & Answers on Electronic Commerce, by Noé-Djawn White and Nathalie Quann. This document provides information about electronic commerce in a brief, easy to read question and answer format.

Print Media Treatment of Hate as an Aggravated Circumstance for Sentencing: A Case Study, by Steven Bittle. The report focuses on subparagraph 718.2(a)(i) of the *Criminal Code of Canada*, which states "evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor" shall be deemed an aggravating circumstance. The report explores the print media portrayal of *R.* v. *Miloszewski*, the most important case relevant to subparagraph 718.2(a)(i).

Examination of Declining Intimate Partner Homicide Rates: A Literature Review, by Myrna Dawson. This report provides an overview of social science research that has documented the apparent decline in spousal or intimate partner homicide and examines various explanations for this phenomenon.

An Evaluation of Post-Charge Diversion: Final Report, by Tammy C. Landau. This report is an evaluation of two post-charge diversion programs for first-time adult offenders operating in the Toronto area.

Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures, by Thomas Gabor and Nicole Crutcher. The Department of Justice Canada, Research and Statistics Division published a review of literature, examining the crime preventative, fiscal and social consequences of mandatory minimum penalties, as well as arguments for and against their use.

The **Directory of Research** is designed as a vehicle for sharing our research with policy and research specialists within the Department of Justice, across federal departments, and outside government. This document details current and ongoing research and statistics projects underway in our four areas of research specialization: Public Law and Access to Justice; Criminal Law Research; Family, Children and Youth; and Statistical and Environmental Analysis.

Lessons Learned is a companion document to the Directory of Research. Each year, the Division's research reports and other products and activities (seminars, symposia, workshops) provide a wealth of knowledge, innovative ideas and policy-relevant findings. This annual report will synthesize all the valuable "lessons" that we learned from our research activities over the year. It captures emerging ideas, themes, findings, theories, new concepts, and insights, and will point to ways to apply these learnings to research and policy.

Research in Profile

MEDIATION BETWEEN YOUNG OFFENDERS AND VICTIMS: RESULTS OF EXPLORATORY RESEARCH IN QUEBEC[1]

By Professor Mylène Jaccoud, Researcher, International Centre for Comparative Criminology, Université de Montréal.

Introduction

In Quebec, mediation between offenders and victims is applied mainly in the youth justice sector by alternative justice agencies (OJA).[2] Compared to other measures (community service, improvement of social skills, work option), mediation makes up only 6% of all measures taken by the OJA in 1998-1999 (Charbonneau, 2002). Very little research has been done on the practice of mediation in Quebec. Below, we outline the results of an exploratory research project3 on the experiences and views of youth and victims who have participated in mediation.

Methodology

The primary objective of this study is to learn about the experiences of the main players involved (young offenders and victims) who have participated in OJA mediation in a city in Quebec. More specifically, the study focuses on perceptions of the offence and its consequences, the motives for participating in mediation, the experience of the meeting, the respective points of view of the parties and the impact of the mediation.

For this qualitative study, we conducted semi-directed interviews. Fifteen interviews took place with six victims (four women and two men), five youth (four boys and one girl) and four mediators. We interviewed victims and offenders who were not linked to the same events and who were involved in property offences (eight cases) and offences against the person (three cases).[4] The offences dealt with in the program included breaking and entering, assault or threats of assault, theft, armed robbery and arson. Data were collected between January and April 1999.

Research Results

Comparing the experiences of youth and victims accentuated the differences as well as the similarities between these two groups of players.

The Differences in the Perspectives of the Players Involved

Point of View on Offence: The youth considered the offence to be a chance mistake, foolishness, which they perceived as unimportant. However, the victims described the psychological consequences suffered at the time of the offence. All mentioned experiencing fear and changes in behaviour or the way they lived their life following the offence.

Motives for Participating in Mediation: The youth accepted the mediation by assessing the impact of the other options that were suggested to them. Since community work was seen as too severe and payment to the community of a sum of money too high, considering their financial situations, mediation was seen as the least difficult option. All expressed their satisfaction in having been able to avoid appearing before the court. Apart from one respondent who had a relationship with the victim, none was motivated by consideration for the victim. However, all the victims accepted the mediation because of the possible impact that this procedure could have on the young offender. Moreover, a certain diversity was seen with regards to their motives: some wished to obtain responses to their questions, express their feelings, receive compensation, participate in preventative measures in the hopes that the youth would understand and then put an end to their bad behaviour or further, to resolve a conflict when a relationship with the youth was already established.

View of Mediation: The youth viewed mediation as an escape from legal action or more punitive alternative measures. However, the youth did not expect to see the restorative aspect that is theoretically part of this type of

[1] This study was funded by the SSHRC in 1998-1999 as part of its program for small grants. A Master's thesis from the Université of Montréal's School of Criminology was written using this information (Blumer, 1999).

[2] The OJA is responsible for applying alternative measures within the framework of the *Young Offenders Act*.

[3] The results presented only apply to interviews with victims and youth.

[4] Our intention at the beginning was to meet with youth and the victims at the same time and to primarily select participants having been involved in a case of offence against the person. Never having succeeded in obtaining the agreement of both parties or having lost contact with one of them, we had to then modify our strategy.

procedure. For them, it was simply a less punitive process, applied primarily so that they could explain why they committed the offence. Only one respondent described mediation as a mechanism during which he should apologize to the victim. Contrary to this, the victims saw mediation as an educational tool allowing youth to take responsibility for an offence.

Sources of Satisfaction: Considering the different ideas that the victims and young offenders had about mediation, the sources of satisfaction attained after the meeting were also different. The youth were satisfied to have avoided a more serious punishment or prosecution, whereas the sources of satisfaction for the victims were more diverse – their contribution to helping the youth take responsibility for his/her actions or learn from the experience or becoming more educated, expressing their feelings and easing fear made up their main sources of satisfaction following the mediation meeting.

Similarities in Perspectives of Players

Points of View that Parties had of Each Other (before the mediation): Youth and victims held a very stereotypical vision of each other before the mediation. The victim believed that the youth was aggressive, indifferent to others and feared that he/she would react aggressively during the mediation meeting. The youth saw the victim as an adult who was indifferent to the reality of youth and also feared that he/she would react aggressively and vindictively during the meeting.

Feelings before the Meetings: Youth and victims both experienced a certain distress and anxiety before the mediation meeting, feelings which were closely linked to the view that each had about the other party.

Impact of the Meeting: Following the mediation meeting, the youth and victims expressed surprise regarding their image of the other. The common impact of the mediation experience was that stereotypes that each had of the other were broken down. The image held by the other party drastically changed. The victim saw the youth as timid, shy and uncomfortable while the youth saw the victim as sympathetic and understanding.

Negotiations of Agreement: Youth and victims spoke very little of negotiation and terms of the agreement. Because of this, the facts and feelings expressed preceding the negotiation stage of the agreement made up the central issue for the participants.

Other Conclusions

Our interviews illustrated to us that the youth realized the impact of their actions during the mediation meeting. The lack of negotiations between the parties was surprising. In all of our interviews, the same scenario took place: the victim suggested restorative measures that the youth systematically accepted with no counterproposal. In addition, the youth had informed us of their surprise at the lack of severity in the requests made by the victims, which undoubtedly made it easier to understand why they did not negotiate.

All of the youth that we met with honoured the agreement with the exception of one who re-offended. According to him, he would not have re-offended if he had performed community service, which is considered to be more severe. The victims emphasized that the non-verbal attitude of the youth was very important during the meetings. For example, lowering their heads, not making eye contact or blushing were clearly signs of regret, which facilitated interaction, understanding and healing of emotional wounds resulting from the offence.

The completed agreements consisted of apologies, a meeting with their parents for reimbursement, painting jobs at the victim's home and moral agreements (commitment made by the youth to not re-offend). Even in the case of an agreement encompassing clauses for material compensation, the results sought by the victim were essentially educational and moral and consisted of restoring the youth's confidence, instilling the importance of honest work or "giving him/her a chance" for a new start in life.

Main Findings and Research Avenues

This exploratory research does not allow for generalizations of our results. However, certain findings are worth mentioning with regards to practical and theoretical issues in mediation. At first glance, the youth did not seem to be particularly empathetic towards the victims, which was not the case with the victims. The youths' motives seemed to have been more egocentric than those of the victims'. Should one conclude that mediation does not produce the desired effects since the youth wanted to avoid measures considered to be more punitive, above all, while the victims seemed to be less interested in redress than in the educational aspect they attributed to the mediation meeting?

It is important to dissociate the initial motives, the effects and the sources of satisfaction of the parties. If mediation does not signify redress to the youths (motives) and if the sources of their satisfaction are linked to this motive and initial expectation, that does not diminish the real effects of the increased awareness gained during the meeting.

Moreover, opposite processes occurred with the offenders and victims. The offenders tended to minimize the offence at the beginning and its consequences while the inverse occurred with the victims. However, through the process, the youth tended to attribute a stronger significance to the consequences of their actions while

the opposite occurred with the victims, resulting in a certain convergence of the experiences, although it was not simultaneous.

These observations helped us see that the parties' motives for participating in a mediation were not necessarily the most adequate criteria to direct the parties towards a mediation meeting, since the meeting changed their perceptions and provided effects that the parties saw as beneficial. In addition, the satisfaction in having avoided more severe punishment was compatible with the real impact mediation had on re-offending if this impact is sought through mediation.

The most unsettling result of this research was undoubtedly the lack of negotiations in the agreements. Theoretically, mediation is designed to be a process where control in resolving their conflict is given back to the parties. An imbalance seemed to have existed regarding this matter and was undoubtedly supported by the difference in age of the parties. A symbolically parental relationship seemed to have occurred. Practically speaking, it is important to carefully consider the training of mediators with regards to their role in reallocating control to the parties.

In the area of research, it would be beneficial to direct more research towards analyzing the negotiating powers of the parties, a research field, which to date, has not been explored to any great extent. It is equally important to direct the study towards a more detailed assessment of the effects of mediation, emphasizing qualitative research, which is a type of research that has the benefits of less pre-structuring of the field to be studied and of consolidating the analysis of the effects from the points of view and experiences of the parties in a mediation.

References

Charbonneau, S. (2002). *Médiation pénale: points de vue des acteurs.* Mémoire de maîtrise, École de criminologie, Faculté des Études supérieures, Université de Montréal.

Ferrazzo-Blumer, A. (1999). *La médiation: les expériences et les points de vue des victimes, des jeunes contrevenants et des médiateurs.* Mémoire de maîtrise, École de criminologie, Faculté des Études supérieures, Université de Montréal.

RISK OF IMPRISONMENT AND SUMMARY OFFENCES

By Jeff Latimer, Senior Research Officer & Jean-Paul Roy, Research Assistant, Research and Statistics Division

Introduction

The provision of state-funded counsel for criminally accused is largely provided to low-income Canadians as a method of providing equal "access to justice". The assumption is that low-income accused do not have the capacity to reasonably pay for an adequate criminal defence. The state, therefore, should provide legal aid for those who cannot afford counsel. Legal Aid Plans (LAPs) in each jurisdiction set financial eligibility guidelines to determine who will receive services. Legal aid eligibility is not, however, simply a matter of financial status. LAPs also reject applicants on the basis of their specific criminal charge. Less complex and less serious cases, such as summary offences, are not

Seminar Series

The Spring Series included the following sessions:

The Cost of Crime: Methods and Findings from Past and Recent Research.
Mark Cohen, Director, Vanderbilt Centre for Environmental Management Studies (VCEMS), Vanderbilt University. April 4, 2002.

Crime and Social Control in Late Modernity: From Rehabilitation to Retribution.
David Garland, New York University School of Law. April 9, 2002.

What is Crime?
Stuart Henry, Wayne State University. April 12, 2002.

Researching Charter Issues.
Mary Eberts from Eberts, Symes, Street and Corbett. May 10, 2002.

Youth Justice.
Justice Peter Harris, Ontario Provincial Court. June 14, 2002.

Look forward to the upcoming Seminar Series in Fall 2002.

Contact:
Karin Stein, Research Dissemination

typically covered by LAPs regardless of the accused's income and/or assets. This policy is based upon the notion that less serious cases typically do not result in dire consequences, such as a loss of liberty (i.e., incarceration) for the accused. State-funded counsel, it is argued, is therefore not warranted.

While LAPs do rule on a case-by-case basis to determine legal aid eligibility, the assumption, remains however, that services are generally provided to accused charged with indictable offences and not provided to accused charged with summary offences since they are less serious and less complex. Unfortunately, data are currently not available on the proportion of summary offences rejected for "coverage" reasons to verify this assumption. Nonetheless, with the increasing number of hybrid-summary offences in Canada, this assumption may not be altogether valid.

The central goal of this paper is to examine the notion that summary offences, in general, do not result in serious consequences (i.e., incarceration). Secondarily, we hope to determine, with existing court-based data, factors that would lead to a greater risk of imprisonment for accused charged with summary offences (e.g., criminal history of accused, type of charge).

Methodology

In order to examine the risk of imprisonment for accused charged with summary offences, we requested 1999/2000 data from the Adult Criminal Court Survey (ACCS) managed by the Canadian Centre for Justice Statistics (CCJS) at Statistics Canada. The ACCS contains data on federal statute charges received from provincial and territorial government departments responsible for adult criminal courts. The primary unit of analysis is the case, which is defined as one or more charges laid against an individual and disposed of in court on the same day. All case information is presented by the Most Serious Offence (MSO). The ACCS contains data from seven provinces and two territories (Newfoundland, Prince Edward Island, Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta, Yukon, and the Northwest Territories) representing approximately 80% of national adult criminal court caseload.

Approximately 320 unique *Criminal Code* offences were reported as summary offences in 1999/2000. In order to construct a more manageable number of groups for analysis, these offences were grouped into the following categories.

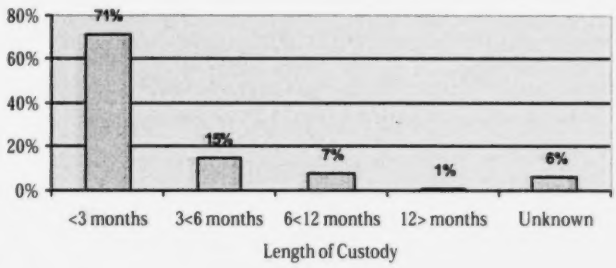
- Violent offences (e.g., assault, uttering threats, criminal harassment)
- Sexual offences (e.g., sexual assault, sexual interference, indecent acts)
- Weapons offences (e.g., careless use of firearm, concealed weapon)
- Fraud/money laundering
- Possession of stolen property <$5000
- Drug possession/paraphernalia
- Vehicular offences (e.g., dangerous operation, driving while prohibited)
- Mischief
- Prostitution offences
- Gambling offences
- Breaches
- Other

In total, these twelve offence categories represented 17,287 cases involving a summary conviction during the fiscal year 1999/2000. The data were provided in an aggregate level presentation format, which does not allow for any micro level or statistical analyses. Nonetheless, the data were disaggregated by disposition (i.e., incarceration versus no incarceration), criminal history (i.e., first-time offenders versus recidivists) and number of charges (i.e., single charge cases versus multiple charge cases) in order to examine possible factors that would increase the likelihood of incarceration.

Results

Of the 17,287 cases involving a summary conviction, 18% (3,162 cases) received a custodial sentence as the most serious disposition. In other words, one in six accused charged with a summary offence in Canada are at risk of incarceration. The vast majority of these, however, (71%) received a custodial sentence of less than three months (see Figure 1).

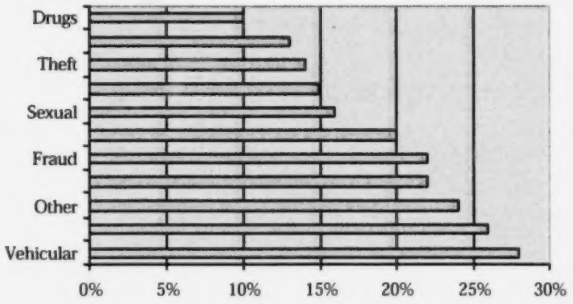
Figure 1. Summary Offence Cases Receiving Custody, 1999/2000



In order to determine factors that increase the likelihood of receiving a custodial sentence, we examined the criminal history of the accused, the criminal charge, and

the number of charges in a single case. Surprisingly, the actual criminal charge did not appear to have the anticipated effect on the likelihood of incarceration. Accused charged with violent offences and sexual offences were much less likely to receive custody compared to vehicular offences, breaches and fraud offences (see Figure 2).

Figure 2. Percentage Incarcerated by Offence Type*, 1999/2000



(*None of the accused charged with "gambling offences" was sentenced to prison).

The number of criminal charges per case, as well as the criminal history of the accused, however, did have the expected effect on the likelihood of incarceration. Recidivists were more likely to be incarcerated than first-time offenders. In fact, there was a direct linear positive relationship between the number of previous convictions and the likelihood of incarceration. In addition, those accused facing multiple charges were much more likely to receive custody compared to single charge cases (see Table 1).

Table 1. Percentage of Accused Receiving Custody

Criminal History	Single Charge Case	Multiple Charge Case
First offence	5%	19%
One prior	9%	26%
Two priors	15%	42%
Three or more priors	32%	56%

As Table 1 indicates, 56% of accused with three or more previous convictions and currently facing multiple charges receive custody. In other words, one in every two accused with extensive criminal histories who is charged with more than one summary offence in a single case will be incarcerated in Canada. This relationship also holds true regardless of the actual criminal code offence.

Conclusion

There are several conclusions to be drawn from this very preliminary study. First, the assumption that summary offences do not result in serious consequences (i.e., incarceration) is not necessarily true. While the length of prison time is typically less than three months, a large proportion of accused do receive a custodial disposition. Second, the likelihood of incarceration increases when an accused is facing multiple charges compared to a single charge case. Third, the likelihood of incarceration also increases with each previous conviction. Fourth, these findings can be useful for consideration in legal aid eligibility determinations. Since LAPs decide eligibility on a case-by-case basis, factors such as the number of previous convictions and the number of charges per case can and should be considered in the decision making process.

MURDER OF JUVENILES IN THE U.S. AND CANADA, 1999

By Stephen Mihorean, Principal Statistician, Research and Statistics Division & Paul Harms, Research Associate, National Center of Juvenile Justice.

The following excerpts are from a forthcoming joint publication of the National Centre for Juvenile Justice, Pennsylvania and the Research and Statistics Division of the Department of Justice Canada. The authors gratefully acknowledge the assistance provided by the FBI's Criminal Justice Information Services Division, the Department of Justice Canada and the Canadian Centre for Justice Statistics.

In 1999, an estimated 1,830 juveniles (persons under the age of 18) were murdered in the U.S., about 30 times the number in Canada (58). Even when population differences are taken into account, the 1999 U.S. juvenile murder rate (2.6 murders per 100,000 persons under age 18) remains over three times the Canadian rate (0.8). Between 1980 and 1999, the juvenile murder rate in the U.S. increased substantially and then decreased, while the Canadian rate remained relatively constant.

These findings are derived from the FBI's Uniform Crime Reporting Program. Within this FBI program, detailed Supplementary Homicide Reports (SHR) are requested from all local law enforcement agencies. The SHR data provide information on the demographics of both victims and offenders, the relationship between them, the

weapon used, and other variables related to the context in which the murder was committed. SHR data are available on 90% of the homicides committed in the United States between 1980 and 1999. National estimates are developed from these data. In Canada, the Canadian Centre for Justice Statistics' Homicide Survey has collected police-reported data on homicide incidents since 1961, including the characteristics of victims and accused. Canadian data represents 100% of all homicides reported to police between 1980 and 1999. These data sources yield the following about murdered juveniles in Canada and the United States.

Canada and the U.S. are highly interconnected across several thousand miles of common border. Although similar in physical size, in 1999 the U.S. population of 273 million was nine times larger than the Canadian population of 30 million. Between 1980 and 1999, 12,600 persons were murdered in Canada. During the same period there were 418,200 murders in the U.S., 33 times the number of Canadian murders. In other words, persons in the U.S. between 1980 and 1999 were almost four times more likely to be murdered than were persons in Canada.

The proportion of the total population under age 18 was similar in Canada (24%) and in the U.S. (26%) between 1980 and 1999, so the U.S. juvenile population was also about nine times greater than the Canadian juvenile population over this period. In both countries, about one of every ten persons murdered between 1980 and 1999 was a juvenile: Canada (11%) and the U.S. (10%). The number of juveniles murdered in the U.S. between 1980 and 1999 (41,800) was 26 times the number of juveniles murdered in Canada (1,600). Therefore, between 1980 and 1999, the average annual rate at which juveniles were murdered in the U.S. (3.2 murders per 100,000 juveniles in the population) was nearly three times the Canadian rate (1.2).

The U.S. juvenile murder rate remained below 3 per 100,000 for most of the 1980s. Large increases starting in the late 1980s brought the U.S. juvenile murder rate to 4.3 by 1993. The U.S. juvenile murder rate fell for each of the next six years, so that by 1999 the rate was once again below 3 (2.6) and very near its lowest level for the 19-year period. In comparison, the Canadian juvenile murder rate over the 1980 to 1999 period changed little, with the 1999 rate (0.8) being the lowest of the period.

Between 1980 and 1999, while U.S. juveniles were murdered at a rate three times that of Canadian juveniles, the U.S. murder rate for juveniles under age 13 averaged 1.6 times the Canadian rate. Notable in this age group are the murder rates for infants under age 1. These rates were relatively high in both countries during this period: Canada (4.5) and the U.S. (7.1). As juveniles aged beyond infancy, their chances of being murdered decreased dramatically in both Canada and the United States.

As juveniles enter their teens, the likelihood of being murdered increased in both Canada and the U.S. This increase was most marked for the murder of U.S. juveniles. For the period between 1980 and 1999, the U.S. murder rate for juveniles aged 17 was 17 times the rate for juveniles aged 9. This difference is not as large in Canada; the murder rate for Canadian 17-year-olds was 4 times that of 9-year-olds.

Homicide trends between 1980 and 1999 were different for older and younger juvenile victims. The rate at which juveniles under age 12 were murdered changed little from 1980 to 1999 in both the U.S. and Canada. With the exception of a small increase over a two-year period in the mid 1980s, the Canadian murder rate for victims under age 12 remained at half the U.S. rate between 1980 and 1999. This pattern was true for both males and females.

The large divergence of the Canadian and U.S. juvenile murder rates between 1980 and 1999 was driven by the murder of youth aged 12 to 17. Between 1987 and 1993, the U.S. murder rate for youth aged 12 to 17 increased from 4 times to 9 times the Canadian rate. The subsequent large decrease in the U.S. rate between 1993 and 1999 brought it down to 5 times the Canadian rate by 1999.

The divergence of Canadian and U.S. murder rates can be further traced to the murder of males aged 12 to 17. While the U.S. murder rate for male victims aged 12 to 17 increased steadily from 4.3 to 13.6 between 1984 and 1993, the Canadian rate fluctuated between 1.0 and 2.0, showing no discernable pattern. By 1993, the U.S. murder rate for males aged 12 to 17 had reached 12 times the Canadian rate. The subsequent decrease in the U.S. murder rate for male victims aged 12 to 17 brought its rate to 6 times the Canadian rate by 1999.

The U.S. murder rate for female victims aged 12 to 17 did increase during the late 1980s and early 1990s, although the pattern was not as dramatic as that for male victims. In the 10-year period between 1984 and 1993, the U.S. murder rate for males aged 12 to 17 increased 219% while the female rate increased 49%.

Between 1980 and 1999, there was greater disparity between U.S. and Canadian murder rates for victims killed in single-victim incidents than for victims killed in multiple-victim incidents. For this period, the U.S. multiple-victim juvenile murder rate (0.5) was one and a half times the Canadian rate (0.3). In contrast, the U.S. single-victim juvenile murder rate (2.7) was over three times the Canadian rate (0.9).

Between 1980 and 1999, a larger percentage of very young murder victims, those under age 2, were killed by their parents in Canada (82%) than in the U.S. (69%). A larger proportion (24%) of very young murder victims in the U.S. were murdered by acquaintances than in Canada (11%). Strangers murdered roughly equal percentages of young juvenile victims in Canada and the U.S. between 1980 and 1999. For example, in both countries 2% of victims under age 2 were murdered by strangers.

Between 1980 and 1999, 21% of U.S. and 22% of Canadian juvenile murder victims were killed by other juveniles. Another 4% of U.S. and 2% of Canadian juvenile murder victims were killed by juveniles accompanied by at least one adult. During this period, the remainder, 75% of U.S. and 76% of Canadian juvenile murder victims, were killed solely by adults. In both countries, the proportion of juvenile murders committed solely by adults was higher for younger victims.

Notes:

1. All murder rates presented are annual rates. In this bulletin murder rates given for multiple-year periods are calculated as follows: (100,000 times the total number of murders for the age group in the period) divided by (the sum of the population in that age group for each individual year during the period).

2. Data Source Note: U.S. numbers are based on analysis of the Federal Bureau of Investigation's *Supplementary Homicide* Reports for the years 1980-1999 (machine-readable data files); and population data from the U.S. Bureau of the Census, *U.S. Population Estimates by Age, Sex, Race and Hispanic Origin: 1980 to 1999* (machine-readable data files available online, released April 11, 2000). Canadian numbers are based on the Homicide Survey maintained by the Canadian Centre for Justice Statistics of Statistics Canada. The Homicide Survey has collected police-reported data on homicide incidents since 1961, coverage is 100%; Canadian population data from *Annual Demographic Statistics in Canada. 1980-1999*, (Catalogue 91-213XB), Statistics Canada.

Current and Upcoming Research from the Research and Statistics Division

CANADA-FRANCE PROJECT

For more than a year, the Policy Integration and Coordination Section, the Research and Statistics Division, the National Crime Prevention Centre and the Youth Justice Policy Section have been involved in an international project on youth. The purpose of the project is to compare the methods of youth protection and regulation at the community level. The first phase of the Canada-France project is complete, and the results were presented to members of the Steering Committee on February 12 and 13, 2002. The main objective of the first phase was to produce a comparative analysis of the

What's New

The New Department of Justice Canada Internet Site on Family Violence.

The Department of Justice Canada has been a key participant in the federal Family Violence Initiative since 1986. The goal of this Initiative is to reduce the problem of family violence in Canada, particularly as it relates to women and children. The Department's component of the current Initiative focuses on strengthening the criminal justice system's response to family violence. This objective is being achieved through activities in five key areas in the Department: policy, research, project funding, public legal education and information, and evaluation.

Launched on January 31, 2002, the new Department of Justice Internet site on Family Violence includes information on these activities. Also included in the site are fact sheets on "Family Violence", "Spousal Assault", and "Child Abuse". Links to other initiatives in the Department that have relevance to family violence, to relevant Department of Justice publications and to other useful web sites on family violence at the national level are provided through this site.
http://canada.justice.gc.ca/en/ps/fm/index.html

institutional operations, and practices related to supporting vulnerable or delinquent youth in France and Canada. The second phase involves an in-depth analysis of vulnerable or delinquent youth. The Research and Statistics Division and the NCPC plan to eventually produce a final report on these results.

Contact: Nathalie Quann, Senior Statistician

QUESTIONS AND ANSWERS ON DRUG USE AND OFFENDING

This document is an update of the document circulated in May 2000 by the Research and Statistics Division and will be available shortly. It provides the most recent data on drug use and offending in Canada from various sources. To view the earlier version of this document, please visit our Web site at http://canada.justice.gc.ca/en/ps/rs/rep/qa2000-2e.pdf

Contact: Nathalie Quann, Senior Statistician

ALTERNATIVES TO PROSECUTION UNDER REGULATIONS – INTERVIEWS WITH DOJ LEGAL SERVICE UNITS

As part of the Federal Prosecution Service (FPS) Renewal, FPS engaged the Research and Statistics Division to conduct interviews with Legal Service Units (LSUs) in federal government departments which are involved in regulation.

An interview guide was prepared, in consultation with FPS, which asked questions about the available instruments or tools under different regulatory statutes in addition to the prosecution tool. The interview guide also includes questions about the alternatives which are actually used, reasons for preferring different compliance tools in different situations, models and best practices, studies which have been done and regulatory changes underway or contemplated. An objective of FPS is to further the conversation with LSUs and regulatory departments about alternatives to prosecution and to identify lessons and models to share across the federal government.

Interviews have been completed and were reported in Spring 2002. The extent of distribution is yet to be determined. However it is anticipated that a "Lessons Learned" report will be widely available within the department.

Contact: Valerie Howe, Senior Research Officer

A STUDY OF ACCUSED INDIVIDUALS UNDER THE RESPONSIBILITY OF PROVINCIAL MENTAL HEALTH REVIEW BOARDS ACROSS CANADA: INDIVIDUALS FOUND UNFIT TO STAND TRIAL AND THOSE NOT CRIMINALLY RESPONSIBLE

On February 4, 1992, the Parliament of Canada proclaimed into law Bill C-30 (*Criminal Code* Amendments on Mental Disorder). Bill C-30 incorporated changes to assessment orders, determination of fitness to stand trial, the insanity defence, dispositions, and the role of the provincial Mental Health Review Boards. Parliament required that the Mental Disorder provisions of the *Criminal Code* (1992) be reviewed within five years of their inception. Unfortunately, the review of the Mental Disorder provisions was not undertaken by the House of Commons Standing Committee on Justice and Human Rights until the beginning of 2002.

A previous study conducted in 2000 by Justice Richard Schneider (formerly of the Ontario Review Board) to inform the pending review involved the collection of data from Mental Health Review Boards across Canada. Data were collected on the number of: 1) accused in the system each year; 2) hearings held each year; 3) new accused entering the system each year who were "not criminally responsible"; 4) new accused entering the system each year who were "unfit to stand trial"; and, 5) absolute discharges each year for the time period 1987 to 1998. The present study, funded by the Criminal Law Policy Section and undertaken in collaboration with the Research and Statistics Division, involved the collection of similar data for the years 1999 and 2000. It provided an update to the Schneider report and further informed the work of the Standing Committee on Justice and Human Rights. The Standing Committee tabled its final report in June 2002.

Contact: Dan Antonowicz, Research Analyst

A ONE-DAY SNAPSHOT OF ABORIGINAL YOUTH IN CUSTODY ACROSS CANADA

Various Canadian studies indicate that Aboriginal youth are over-represented at every stage of the youth justice process. In many jurisdictions, the proportion of Aboriginal youth in custody far outstrips their representation within the overall population. As a result, critics charge that the criminal justice system fails to meet the needs of these youth.

The over-reliance on the formal court process and custody for Aboriginal youth poses important challenges for the Youth Justice Renewal Strategy. The Youth Justice Policy Team (YJPT) at the Department of Justice Canada recognizes that strategically targeted and community based programs are needed to reduce Aboriginal youths' involvement in the system. To help facilitate this goal, the YJPT requested that the Research and Statistics Division collect information to help direct financial and other resources to reduce the number of Aboriginal youth in custody and to support their reintegration into the community.

On May 10, 2000, the Research and Statistics Division co-coordinated a One-Day Snapshot of Aboriginal Youth in Custody Across Canada. The goal of the Snapshot was to determine the following:

- where Aboriginal youth lived prior to being charged or committing their offence;
- where they committed or allegedly committed their offence;
- where they plan to relocate upon release from custody; and,
- the number, age and gender of Aboriginal youth in custody on Snapshot day, and the nature of their charges or convictions.

The Snapshot includes data on all Aboriginal youth in provincial and territorial facilities (open, secure and remand) on Snapshot Day. A final report, which details the results of this study, will be available in Summer 2002 from the Research and Statistics Division.

Contact: Jeff Latimer, Senior Research Officer

COLLECTION OF DATA ON ORGANIZED CRIME

This project involves gathering all quantitative data available on the various national policy priorities relating to organized crime, such as the following: illegal drugs, criminal motorcycle gangs, commercial crime, money laundering, technological crime and illegal immigration. Other topics are also reviewed, such as street gangs, the intimidation of those involved in the criminal justice system, illegal gambling, auto thefts, illegal diamond trade and the threat of corruption at the national level. A report will be available in the near future, upon request.

Contact: Damir Kukec, Senior, Statistician
Mylène Lambert, Research Officer

LIFETIME VICTIMIZATION IN THE CANADIAN POPULATION

Lifetime victimization data (in contrast to time specific data) is extremely useful because it produces a general picture of the cumulative prevalence of crime across the life cycle of the individual. This research report will take a systematic look at the patterns of lifetime violent and property crime victimization in the Canadian population using the 1999 General Social Survey as its data source. Segments of the population at high risk of single and multiple victimizations will be identified and their social, demographic, and residential factors systematically studied. The report will be available upon request.

Contact: Fernando Mata, Senior Research Officer

CANADIAN HOMICIDE DATA

Tom Gabor, Kwing Hung, Stephen Mihorean and Catherine St-Onge from the Research and Statistics Division have completed an initial analysis of Canadian homicide data. The study uses the two principal sources of national homicide data, police-reported homicides and coroner-reported homicides, to compare homicide trends from 1970-1997. The study also examined whether the differences revealed by the two databases were more pronounced in some Canadian jurisdictions and whether there was any relationship with time. A second, more comprehensive analysis using micro-level data is planned to more completely explain the reasons behind the discrepancies in the two databases. A publication will be available in Summer 2002.

Contacts: Steve Mihorean, Principal Statistician
Kwing Hung, Senior Statistician

A REVIEW OF SELECTED LITERATURE ON VIOLENCE IN VIDEO GAMES

A review of selected video game literature was undertaken by the Research and Statistics Division to assist the F/P/T Working Group on Children and Violence in Video Games and New Media. This research assessed the current state of knowledge regarding violent video games and the impact playing them has on children. Academic journals and various government reports, as well as other sources published in the last two decades, were reviewed. However, the primary source of information was articles in psychological journals. Articles/reports were included if they addressed the question of whether or not children exhibit behavioural effects after playing violent video games and other media. Some additional articles/reports were also included if they provided a review of the literature or included a discussion of other types of offensive content (often combined) with video violence. The main body of the report includes annotations of the articles/reports selected for inclusion.

Overall, the results of the review were inconclusive. One reason for the mixed findings was the lack of distinction between video games and violent video games in many of the studies. In addition, most of the research examined only the short-term effects. In order to develop a better understanding of the impact on children, studies exploring the long-term behavioural effects are needed, as is suggested in many of the articles reviewed. Although some of the research presented studied children of varying ages, most of the research was conducted with undergraduate university students, reducing the generalizability of the results. There is a need to examine both the short-term and long-term behavioural effects of playing violent video games with children in different stages of development and varying amounts of time spent playing. Further exploration of factors mediating responses (e.g., gender) would also provide a more comprehensive explanation of how children's behaviour is affected by violence in video games. Finally, additional research into other forms of offensive content often combined with violence is recommended.

Contact: Dan Antonowicz, Research Analyst

Current and Upcoming Research from Around Government

THE CANADIAN CENTRE FOR JUSTICE STATISTICS (CCJS)

Highlights from Recent Releases at the Canadian Centre for Justice Statistics (CCJS)

***Homicide in Canada*, 2000 (Vol. 21, No. 9)**

- In 2000, there were 542 homicides in Canada, representing an increase of 4 homicides or 1% from 1999. The homicide rate was 1.8 per 100,000 population in 2000, same as in 1999. This is the lowest homicide rate since 1967.
- Over half (54%) of the reported homicides in 2000 were classified by the police as first degree murder, 35% as second degree murder, 10% as manslaughter, and 1% as infanticide.

- Firearm homicides represent 34% of all homicides reported to police in 2000.
- About three-quarters of all homicide victims were male while 90% of all homicide accused were male. In terms of age, the 15-34 age group comprises approximately 28% of the population in Canada, yet 60% of persons accused of homicide belong to this higher risk group.
- While Aboriginal peoples account for 3% of Canada's population, they accounted for 24% of persons accused of homicide and 15% of homicide victims in 2000.
- Roughly two-thirds (67%) of persons accused of homicide had a prior criminal record, the majority (69%) of whom had been previously convicted of violent crimes.
- Strangers were suspects in 17% of solved homicides. Family members accounted for 32% of all suspects, while acquaintances of the victim accounted for 51%.

***Sentencing in Adult Criminal Courts*, 1999/2000 (Vol. 21, No. 10)**

- More than half of cases heard in adult criminal courts resulted in convictions. In 1999/2000, conviction was recorded in 61% of cases heard in adult criminal courts.
- One third (34%) of convicted offenders received a prison sentence, with an average length of 130 days.
- Probation was the most serious sentence in 28% of all convicted cases. The median probation sentence was one year. A fine was the most serious sentence in 32% of cases. The median fine was $300.
- Youth received a similar proportion of custodial sentences as adults. Overall, in both adult criminal courts and youth courts, 34% of convicted offenders received a custodial sentence.

***Crime Comparisons between Canada and* (Vol. 21, No. 11)**

- The total crime rates for the 7 index offences (including homicide, aggravated assault, robbery, break and enter, motor vehicle theft, theft, arson) are similar for Canada and the United States. In 2000, the Canadian rate was 4,000 per 100,000 population, compared to 4,100 per 100,000 in the United States. The trends have been quite similar in both countries in the last twenty years.
- Violent crime rates (for the 3 index offences) have been about twice as high in the United States as in Canada. In 2000, the Canadian rate was 230 per 100,000, compared to 470 per 100,000 in the United States. This ratio had been higher in the past. For example, in the early 1990s, the violent crime rates in the United States were more than 2.5 times higher. The ratio has been decreasing because the decreases in violent crimes in the past few years have been faster in the United States.
- In contrast, property crime rates (for the 4 index offences) have been slightly higher in Canada than in the United States. In 2000, the Canadian rate was 3,750 per 100,000, compared to 3,650 per 100,000 in the United States. The trends have been quite similar in both countries in the last twenty years.
- The total charge rates for the 3 accused level offences (drug offences, impaired driving, and prostitution) are more than two times higher in the United States than in Canada. In 2000, there were 500 persons charged per 100,000 population in Canada for the three offences, compared to 1,200 persons charged per 100,000 in the United States. For individual offences, the charge rates were all two to four times higher in the United States.

***Youth Custody and Community Services in Canada*, 1999/2000 (Vol. 21, No. 12)**

- In 1999/2000, of the 14,505 admissions to secure and open custody among eleven jurisdictions reporting to this survey, the majority were for property offences (42%) followed by violent offences (22%), *Young Offenders Act* (YOA) offences (21%), other *Criminal Code* offences (9%), drug-related offences (3%), and other federal/provincial/municipal offences (3%).
- In reporting jurisdictions where Aboriginal status was known, Aboriginal youth accounted for 23% of the total admissions to sentenced custody, although they accounted for only less than 5% of the youth population in those jurisdictions.
- Remand admissions were most likely to be for property offences (34%), followed by violent offences (23%), other *Criminal Code* (16%) and YOA offences (21%).
- In 1999/2000, there were 34,536 admissions to probation among the ten reporting jurisdictions, representing 55% of all correctional service admissions.
- Probation admissions were most likely to be for property offences (49%), followed by violent offences (29%), other *Criminal Code* offences (7%), other federal/provincial/municipal offences (6%), YOA offences (5%) and drug-related offences (4%).

Upcoming releases will include Adult Criminal Court statistics, A Profile of Canadian Justice System Workforce and Youth Court statistics. For more information on these releases or any justice statistics, please contact the Canadian Centre for Justice Statistics at 1-800-387-2231.

THE LAW COMMISSION OF CANADA

In January 2002, the Law Commission of Canada released its report entitled *Beyond Conjugality – Recognizing and Supporting Close Personal Adult Relationships.* The report followed two years of research and consultations with Canadians to determine how well Canadian laws were responding to the realities of adults in close personal relationships.

While Canadian law supports and regulates adult relationships, most often it uses marriage or marriage-like relationships when developing laws, policies and programs. The Commission's report recommends that governments pursue a more comprehensive and principled approach to the legal recognition and support of personal relationships. The Commission recommends a four-step methodology that invites governments first, to clarify the objectives of the legislation or policy; second, to determine whether in fact relationships are relevant to the accomplishment of the objective; third, to allow, if possible, citizens to designate themselves the relationships that are most important to them; and fourth, to target relationships on the basis of their function, such as economic interdependence, rather than their status.

Beyond Conjugality also proposes a registration system for adults in conjugal and non-conjugal relationships through which they can express their commitment to each other, receive public recognition and support, and voluntarily assume a range of appropriate legal rights and obligations. In addition, in a pluralistic society where the legal regulation of marriage is essentially contractual in nature, the report recommends that governments move toward removing restrictions on same-sex couples.

The Law Commission of Canada has also embarked on a major research project to examine the emerging relationship between public police and private security. While the state remains a significant player in the delivery and regulation of policing, it is no longer the only institution involved in offering guarantees of security to citizens. There is now a range of private policing organizations that include, for example, private security firms, insurance companies, forensic accountants and private in-house corporate security. These private policing agencies have moved beyond simply protecting private property. They are actively engaged in maintaining order, investigating crimes and making arrests in public spaces. They are performing many activities that were once exclusively performed by the public police.

The coexistence and competition at times between publicly funded police forces and private security firms is not unique to the security field. However, the public-private divide in the world of security presents particular challenges to the values of a democratic society: will the private sector police act in a way that is compatible with our values of equality and human dignity? How can we be sure? Is the current division of labour between private and public the optimal one to support policing in our society? All of these questions must be asked at a time when we are and continue to be more concerned about security.

In March 2002, the Commission released a discussion paper on the topic. In February 2003, the Commission will host Securing the Future: An International Conference on the Governance of Security. The conference will take place in Montreal.

Finally, as part of its research on governance relationships, the Commission has undertaken an examination of Canada's electoral system. The capacity of citizens to participate meaningfully in their democratic processes poses challenges for the design of public institutions. Increasingly, Canadians are disengaging from these institutions, and, in the process, becoming more skeptical about the government's capacity to respond to legitimate expectations.

The Commission intends to encourage public dialogue on alternatives to the current voting system, and will actively promote this process by creating opportunities for citizens to voice their opinions about the values they want to see represented in their electoral system. Is the current electoral system adequate or does it require modification? Is the design of our current system best suited to political realities in Canada? Does it facilitate participation in public life or impede it? What are citizens' expectations of a voting system? Will changing the voting system alleviate the growing public discontent with government institutions?

In April 2002, the Commission hosted a forum on Renewing Democracy: Citizen Engagement in Voting System Reform. This event brought together a diverse group of experienced and recognized leaders and experts from a wide variety of organizations and constituencies to examine methods for engaging Canadians on issues associated with the current electoral system and its reform. In addition, the Commission has contracted a researcher to examine the values and conditions that are associated with Canada's

electoral system, as well as the model(s) that best accommodate these preferences.

Further information about these and other projects is available on the Commission's website: http://www.lcc.gc.ca/.

CORRECTIONAL SERVICES CANADA, RESEARCH BRANCH

PERTINENCE OF CULTURAL ADAPTATION OF REINTEGRATION POTENTIAL REASSESSMENT (RPR) SCALE TO ABORIGINAL CONTEXT

By Raymond Sioui & Jacques Thibault, Amiskou Consulting Group.

The "Reintegration Potential Reassessment" (RPR) scale has not yet been validated in an Aboriginal context, and some service providers question its potential for use with Aboriginal offenders. In addition, some studies have pointed out the existence of significant differences between Aboriginal and non-Aboriginal offender profiles, which support the assumption of non-adaptation in a cultural sense. The main objective of this study was to more closely examine the cultural adaptation of the RPR scale, and validate its use with Aboriginal offenders.

As with other studies, this study found statistically significant differences between Aboriginal and non-Aboriginal offender profiles in federal prisons, in terms of age, releases, risk, and need. The study also examined the relationship between certain variables and recidivism among Aboriginal and non-Aboriginal inmates. The results show numerous statistically significant differences between the two groups, and it would appear that the variables on the whole represent a better relationship with recidivism in the case of non-Aboriginal inmates.

Other analyses looked at the implementation of the RPR scale, in terms of discriminative and predictive validity. These also revealed statistically significant differences between the two groups. These differences illustrate the importance of considering cultural adaptation. These analyses support the assumption that weighting based on standardized regression coefficients, and taking into account the best predictors identified for Aboriginals, might prove to be a promising approach toward improving the predictive capacity of the scale and enhancing its adaptation to this population.

Using data from a Johnston (1997) study made possible a number of analyses more specific to Aboriginal conditions with a view to exploring the possibility that they might present a good potential for prediction and/or impact on recidivism. These variables include attendance at a residential school, participation in cultural or spiritual activities, the use of traditional Aboriginal services, such as Elders, Aboriginal liaison officers and mentoring, and participation in programs both reserved and not reserved for Aboriginals. Generally speaking, some Aboriginal-specific services and programs show promise in terms of being potential predictors of recidivism, but perhaps even more in terms of fostering reintegration. Since accessibility to some programs is still very poor, these early results should strongly encourage their development.

Johnston, J. C. (1997). *Aboriginal offender survey: Case files and interview sample*. Ottawa: Correctional Services of Canada, Research Branch.

THE EFFECT OF FAMILY DISRUPTION ON ABORIGINAL AND NON-ABORIGINAL INMATES

By Shelley Trevethan, Sarah Auger, John-Patrick Moore (Correctional Service Canada), Michael MacDonald (Justice Canada) & Jennifer Sinclair (Assembly of First Nations).

The project involved conducting an offender survey in correctional facilities in the Prairie regions to examine the effect of family disruption and attachment on Aboriginal and non-Aboriginal inmates.

The study found that larger proportions of Aboriginal than non-Aboriginal inmates had been involved in the child welfare system when they were children. Approximately two-thirds of Aboriginal inmates said they had been adopted or placed in foster or group homes at some point in their childhood, compared to about one-third of non-Aboriginal inmates.

The report confirms other research, demonstrating that Aboriginal inmates had a more extensive history in the criminal justice system and less stability while growing up than non-Aboriginal inmates. However, this appears to have been less the case during their childhood than their adolescence.

Most inmates said they were attached to their primary caregiver even though many reported a great deal of instability in their home life during childhood. However, those who reported an unstable childhood were less attached to their primary caregiver than were those who reported a stable childhood.

Adolescent stability does not seem to affect the current relationship with a spouse or children. Among both Aboriginal and non-Aboriginal inmates, those with stable and unstable adolescent experiences had a similar amount of contact with, and attachment to, their spouse and children. However, an unstable adolescence may affect the current relationship the inmate has with other family members, such as mother, father and siblings. This may be because there was less contact with these people during childhood and the relationship may have remained distant through adulthood. Interestingly, among Aboriginal inmates, those with an unstable adolescence reported more regular contact with their grandmother than those with a stable adolescence. This may be because as a child they often lived with their grandmothers and maintained this relationship.

Almost three-quarters of the Aboriginal inmates said that they were currently attached to Aboriginal culture, that is, they considered it part of their everyday life and they felt a sense of belonging. Furthermore, 80% said that they were currently involved in Aboriginal activities, such as circles, ceremonies, sweat lodges and smudges. Interestingly, attachment to Aboriginal culture seems to be re-developed upon entry into the federal correctional system.

Approximately one-fifth of the Aboriginal respondents reported attending a residential school. It is likely that the small number of inmates who reported attending residential schools is due to the age of the inmate population, most of whom were too young to be involved in residential schools at the time they were operating. It is clear that those who attended residential school described their experience as very negative. Most said they had no access to cultural or spiritual activities while they were attending the residential school. Further, more than three-quarters said that they had experienced physical and/or sexual abuse at the school.

EXPLORING THE PROFILES OF ABORIGINAL SEXUAL OFFENDERS

By Lawrence A. Ellerby & Paula MacPherson, Native Clan Organization

Since 1987, the Native Clan Organization's Forensic Behavioural Management Clinic (FBMC) has provided assessment and treatment services for Aboriginal and non-Aboriginal individuals in Manitoba who have engaged in sexual offending behaviour. Establishing a database and analyzing variables of interest provided an excellent opportunity to gain insight and direction for developing assessment and treatment strategies as well as contributing to the knowledge base related to sexual offenders.

An offender database was established using variables identified through a review of the literature and consultation with the clinical team at FBMC. The database includes 235 variables and encompasses areas including general offender characteristics, Aboriginal offender specific characteristics, developmental history, criminal history, pattern of offending behaviour and participation in and response to treatment. A total of 303 closed treatment files were reviewed from 1987 through 1999, 40% of which were Aboriginal.

While there were many similarities between the two offender groups, there were also interesting differences in profiles of the Aboriginal and non-Aboriginal sex offenders that warrant consideration and attention:

- The majority of the Aboriginal offenders spoke English as their first language. Although the majority had been raised on reserve communities, most had relocated to urban centres. Only a small percentage identified growing up learning/experiencing traditional Aboriginal culture, teachings and ceremonies as a part of their life.
- While both Aboriginal and non-Aboriginal men experienced difficult and traumatic experiences in their developmental years, such experiences were more pronounced among the Aboriginal men (e.g., loss of family member through suicide or murder, substance abuse by family members, domestic abuse, neglect, sexual abuse).
- A history of substance abuse was more dramatic among Aboriginal offenders. Aboriginal offenders were also more disadvantaged in terms of formal education and employment history.
- Although there were no significant differences between Aboriginal and non-Aboriginal offenders regarding the number of young offender or adult convictions, Aboriginal offenders self-disclosed having committed more violent offences as a young offender and adult for which they were not charged.
- Aboriginal sex offenders appeared more likely to be perpetrators of rape than any other sex offence, while non-Aboriginal sex offenders appear more

likely to be perpetrators of sexual offences against children, particularly incest.

- Aboriginal offenders were more likely to offend against female victims whereas non-Aboriginal offenders were more likely to victimize both males and females. Non-Aboriginal offenders were also more likely to offend against children than Aboriginal offenders. Aboriginal offenders were more likely to offend against Aboriginal victims, while non-Aboriginal offenders were more likely to offend against non-Aboriginal victims. Non-Aboriginal offenders were more likely to offend against victims with whom they held a non-familial role of trust and authority (e.g., religious leader, teacher, coach).
- Aboriginal offenders were more likely to endorse the belief that their offence would not have occurred had they not been intoxicated.
- Aboriginal offenders were more likely to identify their planning/grooming process as including giving their victims alcohol/drugs to facilitate offending. Non-Aboriginal offenders were more likely to give their victims gifts and show them pornography, and were more likely to say they tricked the victim to gain sexual access.
- Aboriginal offenders were more likely to physically assault their victim during the course of a sexual offence.
- There were few differences between Aboriginal and non-Aboriginal offenders in treatment gains.

These findings suggest that while there are many similarities between the Aboriginal and non-Aboriginal men who participated in sex offender treatment at the FBMC, there are differences between the two groups that need to be considered and attended to. These differences are relevant to offender assessment, to the development and delivery of programming directed at reducing sexual recidivism and to our understanding of the dynamics of the sexual offending behaviour of these two groups.

RELEASE POTENTIAL OF FEDERALLY-SENTENCED ABORIGINAL INMATES TO COMMUNITIES: A COMMUNITY-BASED RESEARCH PROJECT

By Mac Saulis, Carleton University; Sid Fiddler & Yvonne Howse, Saskatchewan Indian Federated College.

The goal of this project was to ascertain: the Aboriginal communities release potential; opportunities that will support types of community-based restorative justice programs; to develop alternative programs and services for newly released offenders; and to clarify the feasibility of restorative programs and factors that would influence the use of reintegration programs. Five First Nations communities from Saskatchewan and Alberta participated in the pilot pre-test research inquiry (Kawakatoose, Beardy's, Ahtakakoop, Blood, Samson). A total of 146 people participated, including: individual households, key informants – managers in social, health, education, justice/corrections programs at the community level, elders, community circles, interviews with released offenders, and a circle of offenders currently in prison.

In terms of profiles, off-reserve populations range from 40-60% of the community populations. The communities have various social/economic problems such as population growth, alcohol/drug abuse, family dysfunction, single parent families, unemployment, increasing criminal activity, and youth gangs. Basic services, such as housing, are inadequate. These characteristics contribute to a higher risk for offenders released to the communities. In the five communities, three have started some community-based justice or corrections initiatives.

The communities with community-based justice or corrections initiatives appear to have more knowledge and awareness of the needs of federally-released offenders, as well as more tolerance. In addition, interest is high in programs and services. There is community-based support to address the needs, issues and support necessary for offenders and their release back to the community. However, community receptiveness to offenders did not fully extend to serious criminal offenders without assurances of safety, support programs and services. This issue needs to be clarified with further research.

Community-based initiatives such as Elders' counselling, traditional and cultural activities, and healing circles should be formally recognized and supported. In addition, existing community-based initiatives (i.e., AA, mental health programs, sentencing circles, etc.) should be utilized.

The feasibility of community-based initiatives to monitor, facilitate and sustain release largely will depend on the resources to support existing services. Facilitating and sustaining release requires the development of community infrastructure that would address many of the needs and issues identified by all respondents in a co-ordinated, integrative and holistic way.

Equal partnership arrangements to empower community peoples' capacity is a challenge that is perceived to be shared equally by the individual offender, immediate and extended family, First Nations community and the federal government.

The provision of reintegration services for offenders can be strengthened through the provision of co-ordinated, integrative and holistic approaches. This includes prevention, pre-release, transitional and post-release programs and services.

CONTACT US

Research and Statistics Division
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8
Fax: (613) 941-1845

Intranet Site (within Justice):
http://dojnet/rsd_e/default.htm

Internet Site:
http://canada.justice.gc.ca/en/ps/rs/index.html

Note:
We used The Manual of the American Psychological Association (APA) Guide, Fifth Edition, as a reference for this document.